

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV26-1-V
3:01CR66-5-V**

CURTIS B. AXELROD,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion to Reconsider, filed May 10, 2005.

On January 18, 2005, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence which was denied by this Court on February 28, 2005. In his Motion to Reconsider, Petitioner argues this Court failed to rule on his Appendi argument that his sentence exceeded the applicable statutory maximum.

In Appendi v. New Jersey, 120 S. Ct. 2348 (2000), the United States Supreme Court held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

Even if he did not plead guilty to a specific drug amount, which this Court

believes he did,¹ Petitioner's guilty plea² to a violation of 21 U.S.C. § § 841(a)(1) and 846 for a Schedule II controlled substance, exposed him to a statutory maximum penalty of twenty years. 21 U.S.C. § 841(b)(1)(C). Because Petitioner's sentence of sixty-three months imprisonment did not exceed the statutory maximum for the crime to which he pled guilty, it does not violate the principles set forth by the United States Supreme Court in Apprendi and Petitioner's Apprendi claim is dismissed.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Reconsider is **DENIED**.

¹ Petitioner's Indictment set forth specific drug amounts and Petitioner entered a straight up guilty plea to the Indictment.

² The Court notes that Petitioner also pled guilty to violating 18 U.S.C. § 1956(h) and was sentenced to a concurrent sentence of sixty-three months on that charge.

Signed: October 3, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees
United States District Judge



